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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ANTONIO DAWSON, an	)	CASE NO. CV 10-00339 JST (JCx)
individual,	)	
	)	<b>DEFENDANT COUNTY OF LOS ANGELES'</b>
Plaintiff,	)	<b>OPPOSITION TO PLAINTIFF'S MOTION</b>
	)	<b>FOR RELIEF FROM JUDGMENT PURSUANT</b>
v.	)	<b>TO FRCP 60(b); MEMORANDUM OF LAW</b>
	)	
County of Los Angeles, a	)	
municipal corporation, and	)	Date : June 13, 2011
DOES 1 through 10,	)	Time : 10:00 a.m.
inclusive.	)	Place: Courtroom 10-A
	)	Judge: Hon. Josephine S. Tucker
Defendants.	)	
	)	

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Defendant COUNTY OF LOS ANGELES hereby opposes the  
Plaintiff's Motion for Relief from Judgment on the following  
grounds:

1. Plaintiff's motion fails to show good cause for the  
court's reconsideration of its previous orders due to mistake,  
inadvertence, surprise or excusable neglect pursuant to *Federal*  
*Rules of Civil Procedure*, Rule 60(b).

2. Plaintiff's motion fails to bring the Motion for Relief  
within a reasonable amount of time pursuant to *Federal Rules of*  
*Civil Procedure*, Rule 60(c).

1           3. Defendant requests monetary sanctions in the amount of  
2     \$2,170.00 for researching and preparing an opposition to  
3     plaintiff's frivolous motion.

4                           **MEMORANDUM OF LAW**

5                                   **I.**

6   **STATEMENT OF THE CASE**

7           On September 30, 2010, the court granted defendant's Motion  
8     to Compel and ordered that the plaintiff provide complete  
9     interrogatory responses and a calculation of damages within  
10    fourteen days. The court also issued monetary sanctions in the  
11    amount of \$1,162.50 against the plaintiff and his attorney,  
12    jointly and severally, to be paid to defendant within fourteen  
13    days. The Clerk of the District Court electronically served  
14    notice of this order on September 30, 2010. [Docket # 16]. The  
15    plaintiff failed to comply with the court's order by the deadline.  
16    Contrary to what has been asserted in the moving papers, prior to  
17    the ruling, defendant had only received plaintiff's incomplete  
18    interrogatory responses and no computation of damages.

19           On October 18, 2010, defendant sent Mr. Johnson a letter via  
20    facsimile, e-mail and U.S. mail indicating that the court ordered  
21    monetary sanctions and the calculation of damages were overdue.  
22    Defendant also attached the court's order to the letter. (Exhibit  
23    "A"). There was no response. On October 20, 2010, Mr. Johnson  
24    and defendant's counsel met for a deposition noticed by the  
25    plaintiff. On that day, defendant's counsel verbally reminded Mr.  
26    Johnson that he had to pay the monetary sanctions. Mr. Johnson  
27    indicated that he would "look into it," but never contacted  
28    defense counsel.

1           On November 2, 2010, defense counsel sent Mr. Johnson a  
2       letter indicating that the defendant was giving final notice  
3       regarding the monetary sanctions and his failure to comply with  
4       the court's order to produce a computation of damages. (Exhibit  
5       "B"). On November 4, 2010, at approximately 5:15 p.m., Mr.  
6       Johnson telephoned defendant's counsel and requested an extension  
7       to pay the sanctions by the following Friday, November 12, 2010.  
8       Defendant's counsel agreed. On November 8, 2010, the defendant  
9       sent Mr. Johnson a letter confirming that the parties agreed to  
10      have the monetary sanctions paid by November 12, 2010 no later  
11      than 5:00 p.m. and that the computation of damages was still  
12      outstanding. (Exhibit "C"). Mr. Johnson never paid the sanctions  
13      on the agreed upon date, did not move the court for  
14      reconsideration of its order, nor did he contact the defendant's  
15      counsel. On November 15, 2010, Mr. Johnson finally served  
16      defendant with a general computation of damages. (Exhibit "C").  
17      The monetary sanctions were just paid on May 18, 2011, *more than*  
18      *seven months after the court-ordered deadline.*

19           On January 4, 2011, the court granted the defendant's Motion  
20      for Monetary Sanctions for plaintiff's failure to provide timely  
21      responses to defendant's Request for Production of Documents, Set  
22      No. Two. Monetary sanctions in the amount of \$387.50 were issued  
23      against the plaintiff and his attorney, jointly and severally, to  
24      be paid within fourteen (14) days. The Clerk of the District  
25      Court electronically served notice of this order on January 4,  
26      2011. [Docket #27]. *The court ordered monetary sanctions are*  
27      *still outstanding to this day.*

28           On January 4, 2011, the court also granted the defendant's  
Motion to Compel Witness Fees. The court ordered plaintiff's

1 counsel to pay \$165.00 to the witness by cashier's check within  
2 fourteen days of the order. The court also issued monetary  
3 sanctions in the amount of \$480.50 against the plaintiff and his  
4 attorney, jointly and severally, to be paid within fourteen days.  
5 The Clerk of the District Court electronically served notice of  
6 this order on January 4, 2011. [Docket # 27]. *The witness fees*  
7 *were paid on May 18, 2011, four months after the court-ordered*  
8 *deadline to pay the witness fee. The monetary sanctions are still*  
9 *outstanding to this day.*

10 On January 4, 2011, the court also issued sanctions against  
11 the plaintiff and his attorney jointly and severally in the amount  
12 of \$976.50 to be paid within fourteen days for defendant's Motion  
13 for Contempt. The Clerk of the District Court electronically  
14 served notice of this order on January 4, 2011. [Docket # 27].  
15 *The court ordered monetary sanctions are still outstanding to this*  
16 *day.*

17 On January 20, 2011, defendant sent Mr. Johnson a letter  
18 regarding the court's January 4, 2011-order and the overdue  
19 monetary sanctions. (Exhibit "D"). Mr. Johnson did not respond.  
20 Defense counsel again sent Mr. Johnson a letter regarding the  
21 outstanding sanctions on February 16, 2011. A copy of the court's  
22 order was also attached to the letter. (Exhibit "E"). *There was no*  
23 *response and the sanctions have yet to be paid.*

24 On February 7, 2011, plaintiff's counsel was held in contempt  
25 for failure to comply with the September 30, 2010-order of the  
26 court to pay \$1,162.50 in monetary sanctions and a *per diem* fine  
27 of \$25.00 was issued against plaintiff's counsel. The Clerk of the  
28 District Court electronically served notice of this order on  
February 7, 2011. [ Docket # 30]. *Since plaintiff's counsel paid*

1 the sanctions to the defendant on May 18, 2011, he owes seventy  
 2 (70) days of \$25.00 per day fine to the court. The total amount  
 3 outstanding owed to the court is \$1,750.00.

## 4 II.

### 5 **PLAINTIFF'S MOTION FAILS TO SHOW GOOD CAUSE FOR RELIEF** 6 **OF THE COURT'S MULTIPLE ORDERS DUE TO MISTAKE, INADVERTENCE,** 7 **SURPRISE OR EXCUSABLE NEGLECT.**

8 Plaintiff does not show that he is entitled to relief from  
 9 several court orders due to mistake, inadvertence, surprise or  
 10 excusable neglect. Pursuant to *Federal Rules of Civil Procedure*,  
 11 on motion . . . the court may relieve a party or its legal  
 12 representative from a final judgment, order, or proceeding for . .  
 13 . mistake, inadvertence, surprise, or excusable neglect. In  
 14 determining whether a Plaintiff's neglect is excusable under  
 15 *Federal Rule 60(b)(1)*, a court must consider: (1) the danger of  
 16 prejudice to the nonmoving party; (2) the length of delay; (3) the  
 17 reason for the delay, including whether it was within the  
 18 reasonable control of the movant; and (4) whether the moving  
 19 party's conduct was in good faith. Pioneer Inv. Servs. Co. v.  
 20 Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 395 (1993). The  
 21 plaintiff cannot show that he is entitled to relief from the  
 22 court's orders pursuant to *Federal Rules of Civil Procedure 60(b)*  
 on the following grounds:

#### 23 **A. Plaintiff Shows No Good Cause for Relief from The** 24 **Court's September 30, 2010-Order Compelling Interrogatory** 25 **Responses, Computation of Damages and Imposing Sanctions in the** 26 **Amount of \$1,162.50.**

27 The plaintiff does not provide any points and authorities  
 28 showing that he is entitled to relief from the court's September

1 30, 2010-order, due to mistake, inadvertence, surprise or  
2 excusable neglect. It is unclear whether the plaintiff is seeking  
3 relief for mistake, inadvertence, surprise or inexcusable neglect.  
4 However, the plaintiff is not entitled to relief by any of these  
5 methods.

6 Prior to filing the discovery motion which lead to the  
7 September 30, 2010-order, defense counsel sent the plaintiff  
8 numerous meet and confer letters regarding plaintiff's outstanding  
9 discovery on July 27, 2010, August 6, 2010 and August 13, 2010,  
10 warning that a Motion to Compel would be filed because he failed  
11 to provide timely responses. The defendant also prepared and  
12 served a joint stipulation for a Motion to Compel the plaintiff's  
13 interrogatory responses. (Exhibit "F"). On September 10, 2010,  
14 the plaintiff provided incomplete responses to the  
15 interrogatories. Since plaintiff had yet to provide complete  
16 responses and did not even address the issue of the computation of  
17 damages, defendant had no reason to take the Motion to Compel off  
18 calendar. Further, defendant's counsel never indicated to  
19 plaintiff's counsel that the motion would be taken off calendar.  
20 As such, the plaintiff's belief that the motion would not go  
21 forward was neither reasonable nor based on the facts.

22 On September 30, 2010, the court ruled on the motion without  
23 appearances and vacated the hearing date. The Clerk of the Court  
24 electronically served the order upon both parties on that same day.  
25 On October 28, 2010, defendant's counsel sent plaintiff's counsel a  
26 letter stating that the time to comply with the court's order had  
27 passed and also attached a copy of the court's order. Thus, even if  
28 the plaintiff had ignored the Clerk's copy of the court's order, on  
October 18, 2010, he had been provided a duplicate copy.

1 Defendant's counsel sent two additional letters regarding the  
2 plaintiff's failure to comply with the court's order on October  
3 20, 2010 and November 2, 2010. Counsel responded on November 4,  
4 2010, by requesting an extension of time to pay the sanctions to  
5 November 12, 2010. Thus, plaintiff's counsel was clearly aware of  
6 the order by that date. Now, almost seven months later, plaintiff  
7 and his counsel are seeking to be relieved from the court's order.

8 The plaintiff's lack of compliance with the court's order  
9 cannot be due to mistake, inadvertence or surprise since the  
10 plaintiff was fully aware of the contents of the court's order,  
11 and simply chose to ignore it.

12 Furthermore, the plaintiff cannot seek relief from the  
13 court's order due to excusable neglect. The defendant filed the  
14 motion to compel because of the plaintiff's disregard for the  
15 discovery rules. If the court grants this motion, the defendant  
16 would be unduly prejudiced because there would be no avenue in  
17 which the defendant could seek relief for plaintiff's failure to  
18 comply with the *Rules of Civil Procedure*. Furthermore, the  
19 plaintiff would be entitled to benefit from his own discovery  
20 abuse and disregard of the court's orders which necessitated  
21 court intervention and monetary sanctions to begin with.

22 Therefore, Plaintiff's Motion for Relief from the September  
23 30, 2010-order is frivolous and without any merit. The defendant  
24 respectfully requests the court to deny the motion.

25 **B. Plaintiff Shows No Good Cause for Relief from the**  
26 **Court's January 4, 2011- Order Imposing Sanctions in the Amount of**  
27 **\$1,844.50.**

28 Plaintiff seeks relief from the court's January 4, 2011-order  
alleging: (1) he did not receive notice of the hearing, and (2) he

1 was out of the country and provided a Notice of Unavailability.  
2 Neither of these grounds have merit.

3 The defendant properly e-filed the Motion for Sanctions on  
4 November 23, 2010. Pursuant to the General Rule 10-07 of the  
5 United States District Court, Central District of California rules  
6 of e-filing in federal court, all civil cases are subject to  
7 electronic filing. When a motion is e-filed by a party, a Notice  
8 of Electronic Filing ("NEF") is automatically generated by the  
9 Case Management/Electronic Case Filing ("CM/ECF") system  
10 implemented by the court. Service by the electronic NEF  
11 constitutes service pursuant to the Federal Rules of Civil  
12 Procedure. (Exhibit "G"). Since the defendant e-filed the motion  
13 with the court, the plaintiff was automatically given notice of  
14 the motion. The plaintiff's counsel's failure to check his e-mail  
15 or to review notices and orders by the court and counsel, does not  
16 constitute mistake, inadvertence, surprise, or excusable neglect.

17 Furthermore, plaintiff's argument that he was unavailable on  
18 the hearing date, lacks merit. The Defendant electronically filed  
19 and served its motion for contempt and sanctions November 23,  
20 2010, with notice of the January 4, 2011-hearing date. **The**  
21 **plaintiff did not serve his Notice of Unavailability until**  
22 **December 22, 2010 - a full month after the motion had been served,**  
23 **and beyond the deadline for filing an opposition.** Plaintiff's  
24 counsel did not bother to file the Notice of Unavailability with  
the court.

25 On the date of the hearing, in the interest of full  
26 disclosure, defendant's counsel informed the court of the  
27 plaintiff's Notice of Unavailability. Since plaintiff's counsel  
28 had full notice of the hearing a full month in advance, did not



1     bother to file a written opposition and did not advise the court  
2     of his unavailability, the court ruled on the motion and monetary  
3     sanctions were issued against the plaintiff and his attorney.

4             Again, plaintiff cannot feign knowledge of this order. The  
5     clerk electronically served the order and defense counsel sent  
6     plaintiff's counsel two meet and confer letters regarding the  
7     outstanding sanctions on January 20, 2011 and February 16, 2011.  
8     The plaintiff did not respond to the meet and confer letters and  
9     the sanctions have yet to be paid in clear violation of the  
10    court's order.

11            Thus, the plaintiff fails to show good cause for relief from  
12    the January 4, 2011-order. No mistake, inadvertence, surprise, or  
13    excusable neglect has been shown. The fact that plaintiff's  
14    counsel buried his head in the sand and ignored notice of motion  
15    and the court's orders, does not constitute grounds for Rule 60  
16    relief. The request for relief from the January 4, 2011-order  
17    must be denied.

18            **C.     Plaintiff Shows No Good Cause for Relief from the**  
19    **Court's February 7, 2011-Order Holding Plaintiff's Counsel in**  
20    **Contempt and Issuance of a Per Diem Fine of \$25.00.**

21            Plaintiff seeks relief from the court's February 7, 2011-  
22    order, again claiming that he did not receive notice of the  
23    hearing. The plaintiff was properly notified of the hearing by  
24    the clerk of the court on January 14, 2011, through the CM/ECF  
25    system when the magistrate judge issued the order setting the  
26    hearing. Plaintiff again failed to file a written opposition and  
27    failed to appear.

28            Plaintiff's failure to properly litigate his case, claiming  
lack of notice, is disingenuous based on the record. Not only has

1 notice been electronically served upon the plaintiff, but several  
2 meet and confer letters have been mailed to the plaintiff. His  
3 ignorance of the hearing dates and orders is based on nothing more  
4 than his own refusal to open his e-mail and/or U.S. mail, and read  
5 his faxes.

6 Therefore, Plaintiff's motion fails, wholeheartedly, to show  
7 that he is entitled to any type of relief from the court's orders  
8 due to mistake, inadvertence, excusable neglect or surprise. This  
9 motion should be denied.

### 10 III.

#### 11 **PLAINTIFF'S MOTION IS NOT BROUGHT WITHIN A REASONABLE AMOUNT OF** 12 **TIME PURSUANT TO THE STANDARDS SET FORTH IN FRCP 60(b)**

13 The plaintiff's motion is not brought within a reasonable  
14 amount of time pursuant to *FRCP* Rule 60(b). What constitutes  
15 reasonable time depends on the facts of each case, taking into  
16 consideration the interest of finality, the reason for the delay,  
17 the practical ability of the litigant to learn earlier of the  
18 grounds relied upon, and the prejudice to other parties. Ashford  
19 v. Steuart, 657 F.2d 1053, 155 (9th Cir. 1981).

20 Plaintiff's motion is brought in an unreasonable amount of  
21 time given that plaintiff received notice of motions, hearing  
22 dates and orders when they are filed with the court. The first  
23 court order that plaintiff is seeking relief from was back in  
24 September or 2010, over seven months ago. In addition, the court  
25 orders were due to the plaintiff and his counsel's failure to  
26 comply with the *Federal Rules of Civil Procedure* and *Local Rules*  
27 that are applicable to everyone litigating a case in Federal  
28 court. There is absolutely no reason that the plaintiff should  
have delayed any motion for relief. Plaintiff's motion for relief

1 has not been brought in a timely manner. In addition, plaintiff's  
2 motion is frivolous and completely without merit. Therefore,  
3 defendant respectfully requests the court to deny the motion.

4 **IV.**

5 **DEFENDANT REQUESTS SANCTIONS AGAINST THE PLAINTIFF**

6 **FOR FILING A FRIVOLOUS MOTION**

7 Defendant requests the court issue sanctions against  
8 plaintiff's attorney for filing a frivolous motion. *Federal Rules*  
9 *of Civil Procedure*, Rule 11(b) provides that by presenting a  
10 written motion, an attorney certifies that it is not brought for  
11 an improper purpose and is not frivolous. *Fed. Civ. Proc.* §11(b).  
12 28 U.S.C.A. section 1927 provides that any attorney who so  
13 multiplies the proceedings in any case unreasonably and  
14 vexatiously may be required by the court to satisfy personally the  
15 excess costs, expenses, and attorneys' fees reasonably incurred  
16 because of such conduct.

17 Plaintiff has filed a frivolous Motion for Relief and should  
18 be sanctioned. The basis of plaintiff's motion is that he is  
19 entitled to relief for mistake, inadvertence, surprise or  
20 excusable neglect. Yet, the motion does not even set forth any  
21 points and authorities that support his motion except for the  
22 statute that provides the relief. Nevertheless, the defendant's  
23 attorney had to research the issue and prepare an opposition.  
24 Thus, the County of Los Angeles incurred attorneys fees in  
25 preparing an opposition to the plaintiff's motion. Therefore, the  
26 defendant requests the court grant \$2,170.00 in monetary sanctions  
27 against the plaintiff's attorney.

28 *////*

CONCLUSION

Based on the foregoing, the defendant respectfully requests the court to deny the plaintiff's Motion for Relief.

DATED: May 20, 2011

Respectfully submitted,

NELSON & FULTON

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